

CANADA-US TAX SURVIVAL GUIDE - 2014



The UHY Canada-US Tax Team (CUTT) is a group of experienced tax and accounting professionals, who have hands-on expertise in assisting clients identify and implement practical solutions to their cross-border tax and business issues.

CUTT is pleased to present this guide, which reviews a number of recent developments affecting businesses active in both the US and Canada. The information presented in this guide is accurate to January 1, 2014.

I thank Abigail Kan, Chuck Sockett, Dennis Petri, Duke Grimshaw, Howard Kazdan, Klaus Oehring, Mesa Hodson, Todd Bensley and Aliona Starkova for their contributions and assistance in preparing this guide.

Do not hesitate to contact any of the members listed on the last page of this document if we can be of service to you with your US-Canada cross-border issues.



Jonathan Levy

**Chairperson, UHY Canada-US Tax Team
January 17, 2014**

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TRANSFER PRICING

In line with new pronouncements and developments at the OECD, both the IRS and the CRA are continuing to increase their scrutiny of cross-border transactions between related parties.

As a result, we see a steady increase in the number of small and medium sized businesses selected for transfer-price audits.

Transfer pricing transactions can be grouped into the following general areas:

1. Intangible payments, such as royalties
2. Management and administration fees
3. Sale of products
4. Intercompany loans

Our perception is that both the IRS and CRA appear to be increasing the attention given to the first two areas during their audits, and recently to intercompany loans.

Current regulations in Canada require companies to have transfer pricing agreements in place that follow the OECD transfer pricing guidelines. These agreements must provide economic support of arm's length terms, and must provide complete and accurate descriptions of the transactions. The US reporting requirements are set forth in the Treasury Regulations, and are similar to the OECD transfer pricing guidelines.

CUTT is closely monitoring the recent developments related to the OECD's Base Erosion and Profit-Shifting (BEPS) initiative. One OECD official publicly stated that if the G-20 members agree, the BEPS project could end up "redefining the architecture of the international taxation, rules, tax treaties, guiding principles, recommendations, and decision within the OECD..."

In July 2013, the OECD published an Action Plan that contained fifteen separate action points or work streams, that can be summarized into the following four major categories:

1. General actions on BEPS
2. Treaty actions
3. Permanent establishment and transfer pricing actions
4. Data and transparency actions

The OECD's Action Plan addresses key international tax and transfer pricing matters. Accordingly, taxpayers should stay informed of further developments and identify possible risk areas.

FOREIGN ASSET REPORTING

FBAR

An FBAR is the “Report of Foreign Bank and Financial Accounts” that US persons must file annually by June 30 with the US Department of Treasury. The FBAR is now filed on FinCen Report 114 (formerly form TD F 90-22.1).

US person means:

- US citizens
- US residents
- Green Card Holders
- Individuals electing nonresident status under a tax treaty
- Entities include:
 - Corporations
 - Partnerships
 - Limited liability companies
 - Trusts or estates formed under the laws of the US

US persons are required to file an FBAR if:

1. The US person had a financial interest in, or signature authority over, at least one financial account located outside of the US; and
2. The aggregate value of all foreign financial accounts exceeded \$10,000 at any time during the calendar year to be reported.

Starting in 2013 the FBAR must be filed electronically. The FBAR is not filed with a federal tax return and any filing extensions of time granted by the IRS to file a tax return does not extend the June 30 FBAR filing deadline.



FOREIGN ASSET REPORTING CONTINUED

FATCA - FORM 8938

Starting in 2011, the Foreign Account Tax Compliance Act ("FATCA") led to the introduction of Form 8938 (FATCA), which is included in the 1040 tax return, and is filed in addition to the FBAR.

Form 8938 is required to be filed by an individual who holds any interest in a specified foreign financial asset (SFFA) during the taxable year, which includes:

- a financial account maintained by a foreign financial institution
- any stock or security issued by a foreign person
- a financial instrument or contract that has a foreign issuer or counterpart
- an interest in any foreign entity where such instrument is held for investment

Gold held in a safety deposit box, artwork, interests in a social security, social insurance or other similar program, and personally owned real estate do not constitute as specified foreign financial assets.

However, gold held by a custodian, interests in foreign trusts, foreign estates, foreign pension plans and foreign deferred compensation plans do constitute a specified foreign financial asset.

Real estate held in a trust or other entity is not reportable by the individual. However, an interest in a foreign trust or foreign entity is reportable on separate tax returns which are then identified as filed on the FATCA form. Additional stock issued by a foreign corporation is a SFFA.

The filing thresholds for Form 8938 in 2014 are:

	Value of Foreign Financial Assets at end of the year	Value of Foreign Financial Assets any time in the year
While Living in the US:		
Single	\$ 50,000	\$100,000
Married and filing jointly	\$100,000	\$200,000
Married filing separately	\$ 50,000	\$100,000
While Living Abroad:		
Not filing joint returns	\$200,000	\$400,000
Filing joint returns	\$400,000	\$600,000

FOREIGN ASSET REPORTING CONTINUED

FATCA – INTER GOVERNMENTAL AGREEMENT (IGA)

On February 5, 2014 Canada and the US announced that an agreement was signed covering Canada's FATCA reporting requirements.

Under the agreement, Canadian financial institutions will report financial information on accounts held by US residents and US citizens (including US citizens who are residents or citizens of Canada) to the Canada Revenue Agency (CRA), which will then exchange the information with the IRS.

In addition, the IRS will provide the CRA with increased information on certain accounts of Canadian residents held at US financial institutions.

Several exemptions are listed in the agreement. For instance, the following are exempt from FATCA and will not be reportable:

- Registered Retirement Savings Plans
- Registered Retirement Income Funds
- Registered Disability Savings Plans
- Tax-Free Savings Accounts
- RESP's

In addition, smaller deposit-taking institutions such as credit unions, with assets of less than \$175 million will be exempt.

The 30% FATCA withholding tax will not apply to clients of Canadian financial institutions, and can apply to a Canadian financial institution only if the financial institution is in significant and long-term non-compliance with its obligations under the agreement.

Americans who are resident in Canada and not compliant with their US tax filing requirements should be aware and beware - starting in 2014, Canadian financial institutions could report information regarding their presence and investments that will end up in the hands of the IRS. The same applies for Canadians with US tax filing requirements.

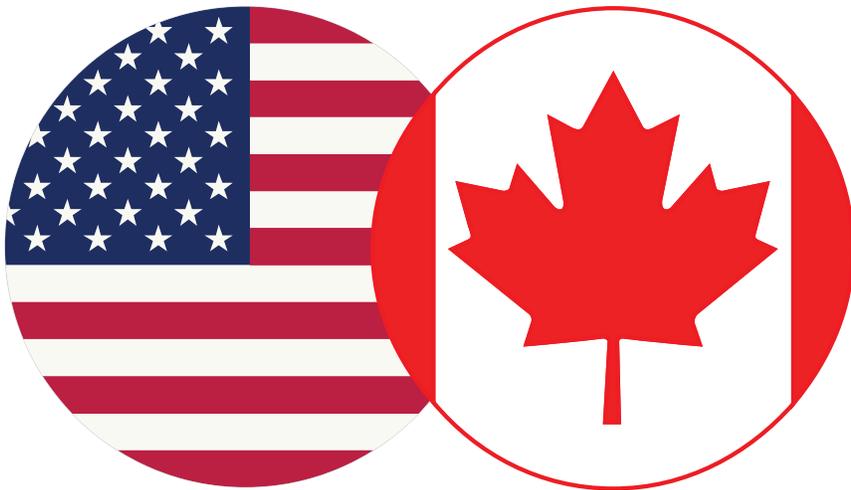
FOREIGN ASSET REPORTING CONTINUED

T1135

Form T1135 must be filed by Canadian individuals and entities (including corporations and trusts) as part of their Canadian tax return if they held “Specified Foreign Property” with a total cost of more than CAN \$100,000 at any time in the taxation year.

Specified Foreign Property includes funds held outside Canada, shares of non-resident corporations (including those held in Canadian brokerage accounts), debts owed by non-residents (such as bonds issued by non-resident corporations and governments), interests in non-resident trusts, real property outside of Canada and other property outside Canada.

Starting in 2013, a taxpayer no longer has to report details if they were issued a T3 or a T5 by a Canadian issuer in respect to specified foreign property. While the foreign property is excluded from the detailed reporting requirements on the form, the taxpayer must still file a T1135 and “tick” the appropriate box indicating they are excluded from detailed reporting.



CROSS BORDER STRUCTURES

HYBRID ENTITIES

Canadian “hybrid” entities are not entitled to treaty benefits, and are subject to a 25% withholding tax on cross-border payments. Unlimited liability companies (“ULC’s”) in Canada include British Columbia, Nova Scotia and Alberta ULC’s.

Note that there are techniques that may be available to avoid the denial of US Treaty benefits for certain situations.

US formed LLCs, however, have access to protection under the Canada-US Tax Treaty and are entitled to treaty rates as follows:

- Branch tax (5% rather than 25%)
- Interest (10% rather than 25%)
- Dividends (5% or 15% rather than 25%)
- Royalty payments (nil or 10% rather than 25%)
- Capital gains (possibly no withholdings required, depending on the circumstances)

TOWER STRUCTURES

On June 15, 2013, the Federal Court of Appeal rendered the decision on the FLSMIDTH Ltd. V. The Queen, 2013 FCA 160, which is the first court case regarding “Tower Structures”.

Tower structures are corporate configurations which utilize hybrid entities through which corporate groups with business located in both the US and Canada, structure their financing such that an interest expense will be deducted in both the American and Canadian entities. These plans, which have been called a “double dip” by some observers, take advantage of the different tax treatments which the IRS and CRA will apply to the same transaction.

In this case, the Federal Court of Appeal dismissed the taxpayer’s appeal of the Tax Court of Canada, ruling that the US tax which was deducted by the Canadian corporation pursuant to subsection 20(12) was not deductible.

Accordingly, any Canadian corporation using a Tower Structure and claiming a section 20(12) deduction for US (or other foreign) tax should review their structure and plan in light of this ruling.

CROSS BORDER STRUCTURES CONTINUED

OTHER GENERAL CONSIDERATIONS

- **CANADIAN FOREIGN AFFILIATE DUMPING RULES**

Where a Canadian corporation is controlled by a foreign parent and also has investments in subsidiaries that are not resident in Canada, care should be taken by the Canadian company in making any investments in the shares or debt of the foreign subsidiary, as there could be Canadian tax implications, including a potential adjustment to the foreign parent's paid up capital in the Canadian company and/or Canadian withholding tax implications.

- **THIN CAPITALIZATION RULES**

Canadian and US tax laws limit the deductibility of interest on cross border loans in certain scenarios. The Canadian thin capitalization rules now limit deductible interest on loans from certain non-residents to the extent of a 1.5 debt to equity ratio.

- **INTERCOMPANY LOANS**

When arranging an intercompany loan, the purpose, nature and terms of the loans need to be considered. There could be deemed interest and/or income inclusions or withholding tax implications in certain circumstances.

- **UPSTREAM LOANS**

Where a Canadian parent company, or a non-arm's length person to such company (other than a foreign affiliate) borrows funds from the Canadian company's foreign subsidiary, there may be a potential income inclusion to the Canadian entity if such loan remains outstanding for more than two years. In certain circumstances, an offsetting deduction may be available.



WITHHOLDING TAXES

CANADA – REGULATIONS 102 & 105

Many US corporations providing services in Canada continue to struggle to comply with Regulation 102 and 105 withholding regulations.

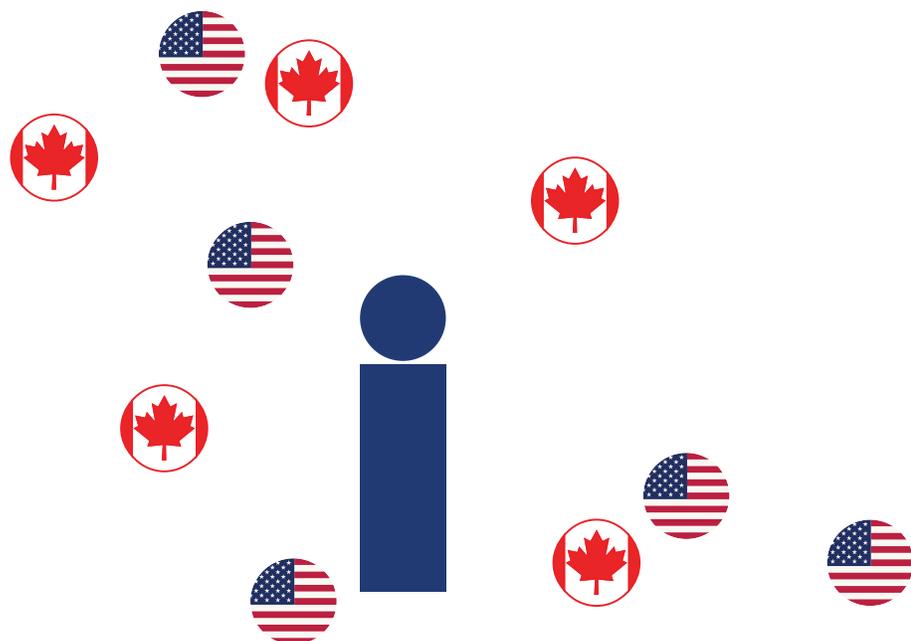
Regulation 102 provides that, in general, US entities sending their employees to work in Canada must open Canadian payroll accounts and these employees are subject to Canadian payroll withholdings.

US employees working in Canada will be exempt from these requirements if they will earn less than \$10,000 annually in Canada. However a waiver is required to qualify for this exemption. Waiver applications must be submitted 30 days before either the start of the employment services in Canada or the initial payment for the employment services.

Regulation 105 of the Canadian Income Tax Act imposes a 15% withholding tax on fees, commissions or other amounts earned from services rendered in Canada by US individuals and corporations. If these services are rendered in the province of Quebec, they will be subject to an additional Quebec withholding tax of 9%.

US service providers can request a reduction or waiver from withholding 30 days before the services are to begin in Canada, or 30 days before the first payment is due for these services.

Often these withholding taxes can be recouped. The US entity must file a Canadian (and Quebec) tax return at the end of the entity's fiscal year and claim a refund to the extent permitted on those tax returns.



WITHHOLDING TAXES CONTINUED

US WITHHOLDING REQUIREMENTS

The IRS continues to hire new agents to audit withholdings on payments to non-residents.

Entities making payments to non-residents are required to appoint a holding agent, who is any person having the control, receipt, custody, disposal or payment of specified items of income to the extent it is gross income from US sources.

Generally, withholding taxes are reported on Forms 1042 and 1042-S and filed with the IRS on or before March 15th. In addition, the withholding agent is required to deposit amounts withheld in a US bank.

Most withholding rates are reduced by the US-Canada tax treaty. A reduction or exemption from US withholding under a treaty is generally made by filing Form 8233 and is forwarded to the IRS within 5 days of receipt. File Form W-8BEN with the US financial institution or withholding agent to claim treaty exemption or reduced rate of withholding.

Withholding on US taxable income of partnerships or LLC's - withholding is required by a partnership and LLC with effectively connected income. Forms 8805 and 8813 are used to report the withholding tax.

Interest income may be exempt from withholding tax.



REAL ESTATE

AMERICANS OWNING RENTAL PROPERTY IN CANADA

Generally, Americans owning Canadian real estate must:

- File Canadian income tax returns annually;
- Remit withholdings to the CRA on a monthly basis;
- Have withholdings of at least 25% of the gross rental income (may be reduced to 25% of the projected net income if a section 216 election is filed in advance).

Americans selling Canadian real estate must:

- File Canadian and provincial (where applicable) tax returns; and
- Remit withholdings of 25% (plus 12% in Quebec where applicable) on the sale proceeds within 10 days of the sale. These withholdings can be reduced if a "clearance certificate" is obtained.

CANADIANS OWNING RENTAL PROPERTY IN THE US

Canadian real estate investors generally must:

- File US tax returns annually (applies to individuals, corporations, partnerships, LLC's, trusts and estates).
- Must apply a withholding tax of 10% on amounts realized on disposition or sale (FIRPTA). However an exemption from withholding on a sale exists if the buyer acquires the US real property for use as a residence, and the sale price does not exceed \$300,000.

The 10% withholding is applicable to the ownership of US real property held directly by individuals, indirectly through partnerships and ownership of stock in a US corporation which is a US real property holding corporation.

Real estate holders should be aware of the tax implications of the following activities:

- Dispositions of US real property interest
- Application of FIRPTA (Foreign Investment in Real Property Tax Act)
- US withholding on dispositions
- How to structure ownership of US vacation properties. Often the use of trusts and partnerships can achieve significant tax savings.
- Exposure to US Estate Tax



ESTATES AND TRUSTS

US ESTATE, GIFT AND GENERATION SKIPPING TAXES

The US Estate Tax applies to all US citizens, both in the US and residing in Canada, and to Canadians who reside in the US via a green card, or after permanent residence has been established. It can also apply to Canadians who own real estate or tangible personal property located in the US, and shares of US companies.

After years of uncertainty as to the US Estate, Gift and Generation Skipping Transfer Tax rules, in 2013 the laws have been made more permanent, the rules for the transfer of wealth no longer are subject to expirations. As a result, one can better plan for long term wealth transfer planning.

The following are the 2014 exemptions, which are subject to annual adjustment for inflation:

Federal Unified Estate & Gift Tax life time exemption	\$5,340,000
Federal Generation Skipping Transfer Tax exemption	\$5,340,000
Annual gift tax exemption per donee	\$14,000
Annual gift to non-resident alien spouse	\$140,000

The Federal Estate and Gift Tax rate (not subject to inflation adjustment) is 40%.

An individual can transfer during their life and at death up to \$5,340,000. A married couple can transfer double the amount up to \$10,680,000. Transfers between spouses are generally exempt from taxation. Upon the death of the first spouse, the deceased spouse's unused exemption can be transferred to the surviving spouse and added to their exemption.

The tax cost basis of assets held by a decedent at death is generally adjusted to the values at the date of death.

The Federal Estate, Gift and Generation Skipping Transfer Tax exemptions will not apply to most states. Therefore, a person may not owe any federal transfer taxes, but could be subject to estate, inheritance or gift taxes in the state of jurisdiction.

The US Supreme Court disagreed with the Defense of Marriage Act that defined marriage as a union of a man and a woman. The IRS now recognizes a same-sex couple as legally married for US tax purposes if the marriage was valid in the state or country where the marriage was performed. (Continued on next page)

ESTATES AND TRUSTS CONTINUED

Therefore, transfers between spouses will generally qualify for the marital deduction and same-sex, married couples may enjoy other spousal benefits that a same-sex couple did not enjoy previously. Here again not all states recognize same-sex couples as married under their state laws. Therefore, this requires knowledge of various state rules.

US residents that maintain trusts under Canadian jurisdiction may be required to file special information returns regarding the assets held in the trusts, and such trusts may be subject to income taxation. Not filing required information returns can subject the trust to substantial penalties (see other US reporting issues).

CANADIAN TRUSTS

Nonresidents who hold taxable Canadian property

The Canadian Tax Act establishes procedures for collecting tax from nonresidents on the disposition of taxable Canadian property as defined in the Canadian Tax Act. In 2010, the definition of taxable Canadian property was amended to move closer to the international norm.

Canada only taxes individuals based on residency and does not consider the domicile of taxpayers for the calculation of tax.

In general, the new definition will limit the taxation of capital gains realized by nonresidents to direct and indirect interests in Canadian real estate, Canadian resource properties or timber resource properties (the specified assets). It should be noted that while the rules will be very similar to the rules in the United States, there is a significant difference; such that any corporation, even if it is nonresident, that holds more than 50% of the specified assets at any time during the prior 60 months will be considered taxable Canadian property.

These rules do not apply to a deemed disposition upon death. However, the executor acting on behalf of a nonresident decedent must file an income tax return for the year of death and pay any tax that may be necessary on the deemed disposition.



E-COMMERCE

E-Commerce transactions raise many questions, such as sourcing for the sale of goods, services and licensing. One issue to watch out for is the creation of a Permanent Establishment (PE) in a foreign country by maintaining a server there, which could require the allocation of revenue to the PE based on the activities conducted by or for the PE.

SOURCING

- Sales of inventory purchased is generally sourced where title transfers
- Sales of inventory produced is generally sourced under either the 50/50 rule or an independent factor or production price
- Sales of intangible is generally sourced to the seller's country of residence
- Income from the licensing of intangibles is ordinarily sourced based on use
- Income from services is generally sourced where the services are performed, which generally means where personnel are employed and capital is expended.
- Application Service Providers (ASP's) Software as a Service (SaaS) sourcing is based on the facts and circumstances in connection with determining where the activities giving rise to income occur
- Sale of digital products such as software, e-books, music and videos present different sourcing issues. Location of purchaser may be unknown in which case sourcing may necessitate the use of the buyers domain

ON-LINE SERVICES

- Generally advertising type services are sourced where the income-producing activities are performed
- Allocation of revenue is required when the income producing activities take place partly within and partly outside of the US. The allocation must be based on the facts and circumstances
- Internet Service Providers (ISP's) involves the use of labor and equipment which requires an allocation based on the place of performance rule, i.e. location of server, routers or other equipment
- ISP's are considered providers of information services

PERMANENT ESTABLISHMENT

- Treaty concept which requires a physical location where business operations are regularly conducted by employees, agents or the location of a server
- ISP's will source revenue to a PE if equipment and personnel are present
- Allocation within and without is based on the locations where the income producing activities occur
- Automated web-based services, ASP, SaaS, income is sourced based on the primary and secondary income-producing activities
- Location of a fully automated server creates a PE, but profits may be allocated based on the location of the substantial activities in connection with the maintenance and operation of the Web site

E-Commerce may involve the sale of inventory and/or the rendering of services which will require a careful analysis of the activities and location of the services performed in connection with the generation of revenue in order to determine the proper sourcing of income which may be subject to tax in a foreign country.

SURRENDERING US CITIZENSHIP AND GREEN CARDS

EXPATRIATES

Expatriates are US citizens who relinquish their US citizenship and long-term permanent residents who surrender their green cards. The renunciation process is relatively complicated, and a total of 2,639 Americans formally renounced their US citizenship or residency in 2012 (up from 1,781 in 2011).

Certain taxpayers must file an Exit Return in the year of the renunciation, which triggers a deemed sale of their assets the day before the expatriation date at fair market value and the US tax liability on such gains is in excess of \$600,000. In the case of any taxable year beginning in a calendar year after 2008, the \$600,000 exclusion is indexed for inflation annually.

In general, any tax attributable to the deemed sale of property may be extended until the due date of the return for the taxable year in which such property is disposed of, provided an election to defer the tax is made. An irrevocable election to defer the tax may be made, however adequate security must be provided. Generally, a bond or letter of credit are considered acceptable security interests. Interest will be charged on any deferral of tax.

Certain property deemed sold will not qualify for the election such as:

- Any deferred compensation payments
- Any specified tax deferred account
- Any interest in a nongrantor trust

Special rules apply to US withholding on deferred compensation payments.

Only “covered expatriates” are subject to these deemed sale rules. A “covered expatriate” is a person whose average annual net income for the 5 tax years ending before the date of loss of US citizenship exceeds \$124,000, the person’s net worth as of such date is \$2 million or more. Such person must certify under penalty of perjury that he or she has met the requirements for the 5 preceding taxable years. The \$124,000 is indexed for inflation for any calendar year after 2004.

A citizen shall be treated as relinquishing his or her US citizenship on the earliest of:

- Renouncing US nationality before a diplomatic or consular officer of the US pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act;
- Furnishes to the US Department of State a signed statement of voluntary relinquishment of US nationality;
- Date US State Department issues a certificate of loss of nationality
- Date a court of the US cancels a naturalized citizen’s certificate of naturalization.

SURRENDERING US CITIZENSHIP AND GREEN CARDS CONTINUED

Two exceptions to the exit-tax regime are:

- Individuals who were born with citizenship in the US and Canada, and as of the date of expatriation continue to be a citizen and tax resident of Canada, and they have not been a US resident for more than 10 taxable years during the 15-year period ending with the taxable year of expatriation;
- US citizens who renounce US citizenship before reaching the age of 18 1/2, provided that they were US resident for not more than 10 taxable years before the renunciation.

Individuals considering renouncing should note that in 1996 Congress enacted immigration legislation (the "Reed Amendment") amending the grounds of ineligibility for visas and of inadmissibility to the US. Under that section of the law, any former US citizen who officially renounced US citizenship and who is determined by the Attorney General to have renounced for the purpose of avoiding taxation by the US is inadmissible to the United States and ineligible for a visa.

Long term residents of the US terminate their resident status by:

- Filing Form I-407 Abandonment of Lawful Permanent Resident Status with the US Citizenship and Immigration Services (USCIS) or a consular officer; or
- Beginning to be treated as a resident of a foreign country under the residence tie breaker rules in a treaty with the US; does not waive the benefits of the treaty; and notifies the secretary of such treatment on Form 8833 and Form 8854.

A long term resident is defined as an individual who has held a green card for any portion of at least 8 of 15 years preceding expatriation. Even one day in a year is considered any portion of a year.



MISCELLANEOUS

CHANGE IN “TAXABLE CANADIAN PROPERTY”

The 2010 Canadian budget included a set of amendments to the definition of “Taxable Canadian Property” (“TCP”) which result in the elimination of reporting requirements on the disposition by non-residents of shares.

Shares of an unlisted corporation will now only be TCP if, at any time in the past 60 months, more than 50% of the fair market value of the relevant share was derived from Canadian real property, including real estate, resource properties and timber properties.

Shares of a listed corporation will now only be TCP if at any time in the previous 60 months 25% or more of the shares of the corporation were owned by the taxpayer and/or non-arm’s length persons, and more than 50% of the fair market value of the relevant share was derived from Canadian real property, including real estate, resource properties and timber properties.

The changes also mean that the Income Tax Act will exclude the gain from certain shares from Canadian tax, and Americans will no longer have to rely on treaty relief for an exemption from Canadian tax on the disposition of such shares.

PERMANENT ESTABLISHMENT

Effective January 1, 2010 the fifth protocol to the US Canada Tax Treaty introduced a new definition of Permanent Establishment. As a result of this change, cross border contractors will be deemed to have a permanent establishment in the other country if either:

The Single Individual Test (for Individuals)

Services are performed by an individual who is present in the other Contracting State for more than 183 days in a 12-month period and, during this period, more than 50% of the gross active revenues of the enterprise are generated from these services; or

The Enterprise Test (for Corporations)

Services are provided in the other Contracting State for more than 183 days in a 12-month period with respect to the same or connected project for a customer’s PE in the other Contracting State

LATE FILING PENALTIES

The Canadian Federal Court of Appeal ruled (see *Exida.com Limited Liability Company v. The Queen*, 2010 DTC 5101) that the penalty for late filing of a tax return was not limited to whether taxes are owing on a return. Accordingly, now a late-filing penalty on a tax return can be imposed even when no taxes may be owed. This ruling could effect:

US entities carrying on a business in Canada through a branch; and US entities disposing of Taxable Canadian Property.

Generally the maximum penalty for late filing a tax return is \$2,500 per year.



MISCELLANEOUS CONTINUED

SALES TAX IN CANADA

US entities are generally required to register for and charge sales taxes if they are carrying on a business in Canada.

2014 Sales Tax Rates

Province	GST	PST	HST
Alberta	5%	n/a	n/a
BC	5%	7%	n/a
Manitoba	5%	8%	n/a
New Brunswick	n/a	n/a	13%
Newfoundland	n/a	n/a	13%
NWT	5%	n/a	n/a
Nova Scotia	n/a	n/a	15%
Nunavut	5%	n/a	n/a
Ontario	n/a	n/a	13%
PEI	n/a	n/a	14%
Quebec	5%	9.98%	n/a
Saskatchewan	5%	5%	n/a
Yukon	5%	n/a	n/a

Further to the introduction of the HST in 2011, there are a number of significant changes to the supplies for services, meaning the portion of the service that is performed in Canada. The rules for supplies of services are generally based on the business address of the customer. However, there are exceptions for certain services, which include:

- Personal services
- Services in relation to real property, goods or a location-specific event
- Services rendered in connection with litigation
- Customs brokerage services
- Computer-related services and internet access
- Repairs, maintenance, and photographic-related goods

There is no change to the place of supplies of real property and goods by way of sale.

A supply of real property is considered to be made in a province (and in Canada) and therefore is subject to the GST/HST rate of that province if the property is situated in the province. A supply by way of sale of good is deemed to be made in a province if the supplier (legally) delivers the property or makes it available in the province to the recipient of the supply.

MISCELLANEOUS CONTINUED

US PASSIVE FOREIGN INVESTMENT CORPORATIONS (“PFIC”) RULES

In December 2013 the IRS finalized regulations to code section 1298(f) which provides guidance for PFIC’s. Effective 2013, increased PFIC information has to be reported by US shareholders annually on form 8621.

In addition, a brand new de minimis threshold amount was established relating to PFIC reporting. Generally PFIC reporting is required if on that last day of the tax year if the value of all PFIC stock owned directly or indirectly by the shareholder exceeds \$25,000; or, if the shareholder holds the PFIC stock only indirectly and the value of the stock indirectly owned exceeds \$5,000 or less.

OTHER US REPORTING ISSUES

FORM 5471 – Information Return of US Person with respect to certain foreign Corporations. Failure to file a complete and accurate Form is subject to a \$10,000 civil penalty, per filing.

FORM 5472 – Information of a 25% foreign-owned US Corporation or Foreign Corporation engaged in a US trade or business. Failure to file a complete and accurate Form is subject to a \$10,000 civil penalty, per filing.

FBAR – FinCen Report 114 (formerly TD F 90-22.1) – Information detailing foreign bank accounts and other foreign investments if the aggregate value of such accounts at any point in a calendar year exceeds \$10,000. Failure to properly file the form may be subject penalties, including a civil penalty of \$10,000. Reasonable cause for failure to file may eliminate the penalty. Willful failure to file may be subject to a civil monetary penalty equal to the greater of \$100,000 or 50% of the balance in the account. (See page 5)

WITHHOLDING - 1042, 1042-S – Failure to file the Form is subject to a \$100 penalty for each filing. Failure to withhold subjects the withholding agent for personal liability for the tax and interest on the unpaid tax.

FORM 1120F – Required if a foreign corporation conducts business in the US (whether or not through a US office), and its US tax was not satisfied through withholding or is claiming tax treaty benefits. Failure to file Form 1120F may result in the income of the foreign corporation to be taxed on a gross basis.



MISCELLANEOUS CONTINUED

OTHER CANADIAN REPORTING ISSUES

T1134 – Foreign Affiliate Reporting: Taxpayers are required to file T1134A and T1134B information returns annually to report information regarding their foreign affiliates and controlled foreign affiliates respectively. In very general terms, a foreign affiliate is a non-resident corporation in which the taxpayer has at least 1% direct ownership and 10% indirect ownership. These returns are required to be filed no later than 15 months following the taxpayer's taxation year end. Assuming that the taxpayer is not required to file more than 50 T1134 returns, the maximum late-filing penalty with respect to T1134 returns is \$1,000.

T106 – Reporting Non-Arm's Length Transactions with Non-Residents: Taxpayers are required to report their transactions with non-arm's length non-residents for each taxation year by filing a T106 information return if the combined annual amount of these transactions exceeds \$1,000,000. Common reportable transactions include sales, purchases, and borrowing and repayments of loans and indebtedness. These forms are required to be filed by the filing deadline for the taxpayer's income tax return for the year. Assuming that the taxpayer is not required to file more than 50 T106 slips, the maximum late-filing penalty with respect to T106 forms is \$1,000.

T1135 – Foreign Property Reporting: Canadian resident taxpayers that own foreign property with cost in excess of \$100,000 at any point during a year are required to file a T1135 information return with the CRA to report certain information regarding the foreign property and income derived from the foreign property. This form is required to be filed by the taxpayer's deadline for filing its income tax return for the year. The maximum penalty for late-filing is \$1,000.

T4A-NR – Payments to Non-Residents for Services Performed in Canada: Taxpayers that make payments during the calendar year to non-residents for services performed in Canada are required to file a T4A-NR information return with the CRA for the year. A T4A-NR return reports both the gross payments made to non-residents and the withholding tax remitted to the CRA with respect to these payments. The filing deadline for T4A-NR information returns is the last day of February of the following calendar year. The maximum penalty for late-filing a T4A-NR information return varies from \$1,000 - \$7,500 depending upon the number of T4A-NR slips required to be filed.

NR4 – Other Payments to Non-Residents: Canadian residents (for this purpose non-residents that carry on business in Canada are deemed to be Canadian residents) are required to file an annual NR4 information return to report other payments made to non-residents during the year. Common payments which are required to be reported on an NR4 return include interest, dividends, and rents. A NR4 return reports both the gross payments made and any withholding tax remitted to the CRA with respect to the payments. The filing deadline for NR4 returns is 90 days after the calendar year end. The maximum penalty for late-filing a NR4 return varies between \$1,000 and \$7,500 depending upon the number of NR4 slips that are required to be filed.



MISCELLANEOUS CONTINUED

NR6 – Undertaking to Withhold on a Net Basis from Rental Income Paid to Non-Residents: The default Canadian income tax treatment for rents earned in Canada by non-residents is a 25% withholding tax on gross rents. Non-residents may elect to pay Canadian income tax on rental income on a net basis by filing an annual Section 216 election return with the CRA. In order to withhold on a net basis non-residents (together with their Canadian resident agents) must annually file Form NR6 with the CRA. Form NR6 is required to be filed before the first rental payment of the year and must be approved by the CRA prior to withholding on a net basis.

NR301 - Declaration for Benefits under a Tax Treaty for Individual, Corporation or Trust: Must be completed by entities benefiting from treaty reduced withholding rates on dividends, interest, management fees, rents and royalties paid to or for the benefit of non-residents.

NR302 - Declaration for Benefits under a Tax Treaty for a Partnership: Must be completed by entities benefiting from treaty reduced withholding rates on dividends, interest, management fees, rents and royalties paid to or for the benefit of non-residents.

NR303 - Declaration for Benefits under a Tax Treaty for a Hybrid Entity: Must be completed by entities benefiting from treaty reduced withholding rates on dividends, interest, management fees, rents and royalties paid to or for the benefit of non-residents.

T2 SCHEDULES 91 & 97 – Treaty-Exempt Income Tax Return for Non-Resident Corporations: Non-resident corporations that carry on business in Canada but do not have a permanent establishment in Canada under the applicable bilateral income tax treaty are required to file an annual corporate income tax return (T2) to report their claim for a treaty-based exemption from Canadian income tax. The filing deadline for filing a corporate income tax return is six months after the corporation's fiscal year end. The maximum penalty for late-filing a corporate income tax return is \$2,500.

T5018 – Construction Industry Subcontractor Payment Reporting: Taxpayers that carry on business in the construction industry are required to annually report to the CRA payments made to subcontractors during the year by filing a T5018 information return. Taxpayers can choose to use either the calendar year or their fiscal year to report these payments. The maximum penalty for late-filing a T5018 return varies from \$1,000 - \$7,500 depending upon the number of T5018 slips required.



CUTT CONTACTS



CANADA



MONTREAL
UHY Victor LLP

Jonathan Levy
CPA, CA
+1 514 282 1836 x275
jlevy@uhyvictor.com



USA



MICHIGAN
UHY Advisors MI, Inc.

Dennis Petri
+1 586 254 1040
dpetri@uhy-us.com



TORONTO
McGovern, Hurley,
Cunningham, LLP

Abigail Kan
CPA, CMA
+1 416 496 1234
akan@mhc-ca.com



NEW YORK
UHY Advisors NY, Inc.

Chuck Sockett
+1 212 381 4731
csockett@uhy-us.com



HOUSTON
UHY Advisors TX, Inc.

Klaus Oehring
+1 713 407 3184
koehring@uhy-us.com